

1 CENTER FOR DISABILITY ACCESS  
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12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16

17                   **Samuel Love,**

18                   Plaintiff,

19                   **v.**

20                   **Ashford San Francisco II LP**, a  
21                   Delaware Limited Partnership;

22                   Defendants,

23                   **Case No.** 3:20-cv-08458-EMC

24                   **First Amended Complaint For**  
25                   **Damages And Injunctive Relief**  
26                   **For Violations Of:** Americans With  
27                   Disabilities Act; Unruh Civil Rights  
28                   Act

29  
30                   Plaintiff Samuel Love complains of Ashford San Francisco II LP, a  
31                   Delaware Limited Partnership (“Defendants”), and alleges as follows:

32                   **PARTIES:**

33                   1. Plaintiff is a California resident with physical disabilities. He is  
34                   substantially limited in his ability to walk. He is a paraplegic. He uses a  
35                   wheelchair for mobility.

36                   2. Ashford San Francisco II LP, a Delaware Limited Partnership owns and  
37                   operates The Clancy, Autograph Collection Hotel located at 299 2nd St., San

1 Francisco, California, currently and at all times relevant to this complaint.

2       3. Plaintiff does not know the true names of Defendants, their business  
3 capacities, their ownership connection to the property and business, or their  
4 relative responsibilities in causing the access violations herein complained of,  
5 and alleges a joint venture and common enterprise by all such Defendants.  
6 Plaintiff is informed and believes that each of the Defendants herein,  
7 including Does 1 through 10, inclusive, is responsible in some capacity for the  
8 events herein alleged, or is a necessary party for obtaining appropriate relief.  
9 Plaintiff will seek leave to amend when the true names, capacities,  
10 connections, and responsibilities of the Defendants and Does 1 through 10,  
11 inclusive, are ascertained.

12

13       **JURISDICTION:**

14       4. The Court has subject matter jurisdiction over the action pursuant to 28  
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17       5. Pursuant to supplemental jurisdiction, an attendant and related cause  
18 of action, arising from the same nucleus of operative facts and arising out of  
19 the same transactions, is also brought under California's Unruh Civil Rights  
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21       6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
22 founded on the fact that the real property which is the subject of this action is  
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25       **PRELIMINARY STATEMENT**

26       7. This is a lawsuit challenging the reservation policies and practices of a  
27 place of lodging. Plaintiff does not know if any physical or architectural  
28 barriers exist at the hotel and, therefore, **is not claiming that that the hotel**

1       **has violated any construction-related accessibility standard.** Instead,  
2 this is about the lack of information provided on the hotel’s reservation  
3 website that would permit plaintiff to determine if there are rooms that would  
4 work for him.

5       8. After decades of research and findings, Congress found that there was  
6 a “serious and pervasive social problem” in America: the “discriminatory  
7 effects” of communication barriers to persons with disability. The data was  
8 clear and embarrassing. Persons with disabilities were unable to “fully  
9 participate in all aspects of society,” occupying “an inferior status in our  
10 society,” often for no other reason than businesses, including hotels and  
11 motels, failed to provide information to disabled travelers. Thus, Congress  
12 decided “to invoke the sweep of congressional authority” and issue a “national  
13 mandate for the elimination of discrimination against individuals with  
14 disabilities,” and to finally ensure that persons with disabilities have “equality  
15 of opportunity, full participation, independent living” and self-sufficiency.

16       9. As part of that effort, Congress passed detailed and comprehensive  
17 regulations about the design of hotels and motels. But, as importantly,  
18 Congress recognized that the physical accessibility of a hotel or motel means  
19 little if the 61 million adults living in America with disabilities are unable to  
20 determine which hotels/motels are accessible and to reserve them. Thus,  
21 there is a legal mandate to provide a certain level of information to disabled  
22 travelers.

23       10. But despite the rules and regulations regarding reservation procedures,  
24 a 2019 industry article noted that: “the hospitality sector has largely  
25 overlooked the importance of promoting accessible features to travelers.”

26       11. These issues are of paramount important. Persons with severe  
27 disabilities have modified their own residences to accommodate their unique  
28 needs and to ameliorate their physical limitations. But persons with disabilities

1 are never more vulnerable than when leaving their own residences and having  
2 to travel and stay at unknown places of lodging. They must be able to ascertain  
3 whether those places work for them.

4

5 **FACTUAL ALLEGATIONS:**

6 12. Due to plaintiff's disability, he is unable to, or seriously challenged in his  
7 ability to, stand, ambulate, reach objects mounted at heights above his  
8 shoulders, transfer from his chair to other equipment, and maneuver around  
9 fixed objects.

10 13. Thus, Plaintiff needs an accessible guestroom, and he needs to be given  
11 information about accessible features in hotel rooms so that he can confidently  
12 book those rooms and travel independently and safely.

13 14. Plaintiff planned on making a trip in February of 2021 to the San  
14 Francisco, California area. He had tremendous difficulty in finding a hotel that  
15 provided enough information about accessibility features that would permit  
16 him to independently assess whether the rooms worked for him.

17 15. Plaintiff felt that The Clancy, Autograph Collection Hotel would work  
18 well for him due to its desirable location and price point. Thus, on or about  
19 October 6, 2020, plaintiff went to The Clancy, Autograph Collection Hotel  
20 reservation website at <https://www.marriott.com/hotels/travel/sfoaw-the-clancy-autograph-collection/> seeking to book an accessible room.

22 16. This website reservation site is either maintained and operated by the  
23 defendant or is run by a third party on the defendant's behalf. It is the official  
24 online reservation system for this hotel.

25 17. But there are very few, if any, accessible features identified for any given  
26 room. Instead, the reservations website has an "Accessibility" tab that  
27 provides a general list of supposedly accessible features but does not provide  
28 any actual data or information beyond a naked label of "accessible." For

example, the hotel delivers this information about the “accessible areas:”

Accessible Areas with Accessible  
Routes from Public Entrance

Business Center  
Concierge desk  
Fitness Center  
Meeting spaces and ballrooms  
Public entrance alternative  
Registration Desk Pathway  
Registration desk  
Restaurant(s)/Lounge(s)

But just about *every* hotel has a business centers, fitness centers, a registration desk, public routes and a restaurant or lounge. Here, all the hotel did was slap the label “accessible” on all of its public spaces. Similarly, under the tab “Accessible Hotel Features,” the hotel delivers this information:

Accessible Hotel Features

Accessible Self-parking  
Meeting room(s) with assistive listening devices  
Self-parking facility, van-accessible spaces  
Self-parking, accessible spaces  
Service animals are welcome  
Valet parking for vehicles outfitted for drivers in wheelchairs  
Elevators

1       19. Again, just about *every* hotel has elevators and parking, but this hotel  
2 simply slaps the label “accessible” on the elevator and parking without  
3 providing a single bit of data. Finally, with reference to any particular or given  
4 hotel room, the hotel has this tab for the rooms:

<b>Guest Room Accessibility</b>	
6	Accessible guest rooms with 32" wide doorways
7	Accessible route from public entrance to accessible guest rooms
8	Alarm clock telephone ringers
9	Bathroom grab bars
10	Bathtub grab bars
11	Bathtub seat
12	Deadbolt locks, lowered
13	Door night guards, lowered
14	Doors with lever handles
15	Electrical outlets, lowered
16	Flashing door knockers
17	Hearing accessible rooms and/or kits
18	Roll-in shower
19	Shower wand, adjustable
20	TTY/TTD available
21	TV with close-captioning
22	Toilet seat at wheelchair height
23	Vanities, accessible
24	Viewports, lowered

27       20. Here, at least, there are a couple pieces of actual information that would

1 comply with the ADA's mandate to provide "enough *detail* to reasonably  
 2 permit individuals with disabilities to *assess independently* whether a given  
 3 hotel or guest room meets his or her accessibility needs. See 28 CFR  
 4 36.302(e)(1)(ii).

5       21. The hotel lets guests know that the doorways are at least 32 inches in  
 6 width. That in rooms with bathtubs, they have grab bars. That the doors have  
 7 levers. That at least one of the rooms has a roll-in shower, that the shower has  
 8 an adjustable wand. These meager offerings have the virtue of having some  
 9 actual detail instead of just being a conclusory label "accessible."

10      22. But it is nowhere near enough to permit a profoundly disabled  
 11 wheelchair user to have any confidence or come to any conclusions about  
 12 whether any given hotel room works for him or her.

13      23. Claiming something is "accessible" is a conclusion or opinion. Persons  
 14 with disabilities do not have to rely upon the naked judgment or conclusions of  
 15 the hotel. The ADA specifically mandates that hotels must provide specific  
 16 information to persons booking their rooms. Under the ADA, the hotel must  
 17 not only identify but "*describe* accessible features in the hotels and guest rooms  
 18 offered through its reservations service *in enough detail* to reasonably permit  
 19 individuals with disabilities to *assess independently* whether a *given* hotel or  
 20 guest room meets *his or her* accessibility needs." 28 C.F.R. 36.302(e)(1)(ii)  
 21 (emphasis added to key words).

22      24. For example, instead of claiming that routes are "accessible," it would  
 23 have been sufficient to state, "the route from the public entrance to the  
 24 registration desk, to the restaurant, to the exercise room, and to the  
 25 guestrooms are all a minimum of 36 inches in width." That is specific  
 26 information about the key feature of an accessible route.

27      25. Plaintiff, like any wheelchair user, simply needs to know some basic  
 28 information (actual data, not adjectives) about the core features so that he can

1 independently assess whether the hotel room works for him. Those core  
2 features for the guestroom itself are simply:

3     • entrances;  
4     • maneuvering space at bed;  
5     • toilet;  
6     • sink;  
7     • bath/shower

8  
9 That's it. These are the critical areas in the guestroom. Plaintiff does not need  
10 an exhaustive list of accessibility features. Plaintiff does not need an  
11 accessibility survey to determine if a room works for him. Plaintiff, like the  
12 vast majority of wheelchair users, simply needs these handful of areas to be  
13 described in enough detail to permit him to independently assess that the  
14 room works for him and that he can book with confidence.

15     26. For the beds themselves, the only thing plaintiff needs to know (and the  
16 only thing regulated by the ADA Standards) is whether he can actually get to  
17 (and into) the bed, i.e., that there is at least 30 inches width on the side of the  
18 bed so his wheelchair can pull up next to the bed for transfer. This is critical  
19 information because plaintiff needs to pull his wheelchair alongside the bed.  
20 Here, the website says nothing.

21     27. For the restroom sink, the two things that will determine whether  
22 plaintiff can use the sink from his wheelchair: (1) can he safely get his knees  
23 under the toilet? To wit: does the sink provide the knee clearance (27 inches  
24 high, 30 inches wide, 17 inches deep) and is any plumbing under the sink  
25 wrapped with insulation to protect against burning contact? The second thing  
26 is whether the lavatory mirror is mounted at a height so that wheelchair users  
27 can sue it. A simple statement like: "the lavatory sink provides knee clearance  
28 of at least 30 inches wide, 27 inches tall and 17 inches deep, all of the under-

1 sink plumbing is wrapped, and the lowest reflective edge of the mirror is no  
2 more than 40 inches high.” Plaintiff has had tremendous difficulty with using  
3 lavatory sinks in the past because sinks were cabinet style sinks or had low  
4 hanging aprons that did not provide knee clearance for a wheelchair user to  
5 pull up and under or, alternatively, where the plumbing underneath the sink  
6 was not wrapped with insulation to protect against burning contact to his  
7 knees. But here, the hotel reservation website says nothing about the  
8 accessibility of the sink.

9       28. For the restroom toilet, plaintiff only needs to know two things that  
10 determine if he can transfer to and use the toilet; (1) that the toilet seat height  
11 is between 17-19 inches (as required by the ADA Standards) and (2) that it has  
12 the two required grab bars to facilitate transfer. Here, there is no information  
13 about the toilet at all. Due to plaintiff’s profound disabilities, transferring from  
14 wheelchair to toilet is difficult and dangerous for him. He needs a toilet at the  
15 correct height and he needs grab bars.

16       29. Finally, for the shower, plaintiff needs to know only a small number of  
17 things: (1) what type of shower it is (transfer, standard roll-in, or alternate roll-  
18 in), (2) whether it has an in-shower seat; (3) that there are grab bars mounted  
19 on the walls; (4) that there is a detachable hand-held shower wand for washing  
20 himself and (5) that the wall mounted accessories and equipment are all within  
21 48 inches height. The plaintiff needs to transfer from his wheelchair to a  
22 shower seat and would like to find a roll-in shower with both a shower seat (not  
23 required for all showers) and grab bars. But the hotel says nothing more than  
24 “roll-in shower” and “shower wand, adjustable.”

25       30. This small list of items are the bare necessities that plaintiff must know  
26 to make an independent assessment of whether the “accessible” hotel room  
27 works for him. These things comprise the basics of what information is  
28 reasonably necessary for plaintiff (or any wheelchair user) to assess

1 independently whether a given hotel or guest room meets his or her  
 2 accessibility needs.

3 31. Other accessibility requirements such as slopes of surfaces, whether the  
 4 hand-held shower wand has a non-positive shut off valve, the temperature  
 5 regulator, the tensile strength and rotational design of grab bars, and so many  
 6 more technical requirements under the ADA are beyond what is a *reasonable*  
 7 level of detail and plaintiff does not expect or demand that such information is  
 8 provided.

9 32. But because the defendant has failed to identify and describe—and/or  
 10 failed to provide the necessary information to the third party operator of the  
 11 website reservation system—the core accessibility features in enough detail to  
 12 reasonably permit individuals with disabilities to *assess independently* whether  
 13 a given hotel or guest room meets his accessibility needs, the defendant fails  
 14 to comply with its ADA obligations and the result is that the plaintiff is unable  
 15 to engage in an online booking of the hotel room with any confidence or  
 16 knowledge about whether the room will actually work for him due to his  
 17 disability.

18 33. This lack of information created difficulty for the plaintiff and the idea  
 19 of trying to book this room -- essentially ignorant about its accessibility --  
 20 caused difficulty and discomfort for the Plaintiff and deterred him from  
 21 booking a room at The Clancy, Autograph Collection Hotel.

22 34. Plaintiff lives in Beaumont California but travels to San Francisco on a  
 23 consistent and regular basis (many times a year) for a variety of reasons,  
 24 primary among them is his work as an ADA tester. Plaintiff frequents  
 25 businesses to determine if they have complied with the anti-discrimination  
 26 mandates of the ADA. Plaintiff will continue his work as an ADA tester into the  
 27 foreseeable future and will be travelling regular to the San Francisco area.

28 35. Assuming that COVID doesn't continue to be an issue, the plaintiff is

1 planning on making the trip sometime between May and June of 2021.

2       36. As a veteran ADA tester, Plaintiff is aware that he needs to return to the  
3 hotel website and to patronize the hotel in order to have standing to see that  
4 the hotel comes into compliance with the ADA's mandate regarding its  
5 reservation policies. Thus, plaintiff will use the hotel's website reservation  
6 system to book a room and travel to The Clancy, Autograph Collection Hotel  
7 when it has been represented to him that the hotel's website reservation  
8 system is accessible. Plaintiff will be discriminated against again, i.e., be  
9 denied his lawfully entitled access, unless and until the defendant is complies  
10 with the law.

11       37. Plaintiff would like to patronize this hotel but is deterred from doing so  
12 because of the lack of detailed information through the hotel's reservation  
13 system.

14       38. Plaintiff has reason and motivation to use the defendant's hotel  
15 reservation and to stay at the defendant's hotel in the future. Among his  
16 reasons and motivations are to assess these policies and facilities for  
17 compliance with the ADA and to see his lawsuit through to successful  
18 conclusion that will redound to the benefit of himself and all other similarly  
19 situated as well as the fact that plaintiff finds this hotel to be centrally located  
20 to many of the places he intends to visit and close to the airport.

21       39. Plaintiff routinely revisits and uses the facilities and accommodations  
22 of places he has sued to confirm compliance and to enjoy standing to  
23 effectuate the relief promised by the ADA.

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1           **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
2 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4           40. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint.

7           41. Under the ADA, it is an act of discrimination to fail to make reasonable  
8 modifications in policies, practices, or procedures when such modifications  
9 are necessary to afford goods, services, facilities, privileges advantages or  
10 accommodations to person with disabilities unless the entity can demonstrate  
11 that taking such steps would fundamentally alter the nature of the those goods,  
12 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §  
13 12182(B)(2)(A)(ii).

14           42. Specifically, with respect to reservations by places of lodging, a  
15 defendant must ensure that its reservation system, including reservations  
16 made by “any means,” including by third parties, shall:

- 17           a. Ensure that individuals with disabilities can make  
18           reservations for accessible guest rooms during the same  
19           hours and in the same manner as individuals who do not  
20           need accessible rooms;
- 21           b. Identify and describe accessible features in the hotels and  
22           guest rooms offered through its reservations service in  
23           enough detail to reasonably permit individuals with  
24           disabilities to assess independently whether a given hotel  
25           or guest room meets his or her accessibility needs; and
- 26           c. Reserve, upon request, accessible guest rooms or specific  
27           types of guest rooms and ensure that the guest rooms  
28           requested are blocked and removed from all reservations

1                   systems.

2                   *See 28 C.F.R. § 36.302(e).*

3                   43. Here, the defendant failed to modify its reservation policies and  
 4                   procedures to ensure that it identified and described accessible features in the  
 5                   hotels and guest rooms in enough detail to reasonably permit individuals with  
 6                   disabilities to assess independently whether a given hotel or guest room meets  
 7                   his or her accessibility needs and failed to ensure that individuals with  
 8                   disabilities can make reservations for accessible guest rooms during the same  
 9                   hours and in the same manner as individuals who do not need accessible  
 10                  rooms.

11

12                  **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 13                  **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
 14                  Code § 51-53.)

15                  44. Plaintiff repleads and incorporates by reference, as if fully set forth  
 16                  again herein, the allegations contained in all prior paragraphs of this  
 17                  complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,  
 18                  that persons with disabilities are entitled to full and equal accommodations,  
 19                  advantages, facilities, privileges, or services in all business establishment of  
 20                  every kind whatsoever within the jurisdiction of the State of California. Cal.  
 21                  Civ. Code § 51(b).

22                  45. The Unruh Act provides that a violation of the ADA is a violation of the  
 23                  Unruh Act. Cal. Civ. Code, § 51(f).

24                  46. Defendants’ acts and omissions, as herein alleged, have violated the  
 25                  Unruh Act by, *inter alia*, failing to comply with the ADA with respect to its  
 26                  reservation policies and practices.

27                  47. Because the violation of the Unruh Civil Rights Act resulted in difficulty  
 28                  and discomfort for the plaintiff, the defendants are also each responsible for

1 statutory damages, i.e., a civil penalty. *See Civ. Code § 52(a).*

2  
3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide  
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the  
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
8 plaintiff is not invoking section 55 of the California Civil Code and is not  
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act, which provides for actual  
11 damages and a statutory minimum of \$4,000 for each offense.

12 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
13 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

14  
15 Dated: January 14, 2021

CENTER FOR DISABILITY ACCESS

16  
17 By: /s/ Russell Handy

18 Russell Handy

19 Attorney for Plaintiff